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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,016

03/15/2004

Roger V. Kendall

FSC-0009

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23599 7590 10/31/2007  
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EXAMINER

ROOKE, AGNES BEATA

ART UNIT

PAPER NUMBER

1656

MAIL DATE

DELIVERY MODE

10/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/800,016	Applicant(s) KENDALL ET AL.	
	Examiner Agnes B. Rooke	Art Unit 1656	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-12 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 12 and 27 is/are rejected.
- 7) ☒ Claim(s) 7-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Final office action is in response to the paper filed on 01/16/2007.

#### ***Status of Claims***

Claims 1-4, 6-12 and 27 are pending and under consideration. Claims 5 and 13-26 are cancelled. New claim 27 has been added.

#### **Rejections Withdrawn:**

1. The rejection of claims 1-5 and 12 under the Obvious type Double patenting is withdrawn because the amended instant claims are referred to different methods.
2. The rejections of claims 1-3, 5, and 12 under 35 USC 102(b) and (e) are withdrawn in view of the amendemnts to the claims narrowing the scope of the claims to particular surfactant that is a polyoxyethylene sorbitan.

#### **New rejections Necessitated by Amendments:**

##### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 12, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/53198 in view of the current state of the prior art.

WO 00/53198 teaches a preparation of lipid extract of mussels from *Perna canaliculus* or *Mytilus edulis*, and the use of the preparation in the treatment of cancer by inhibiting tumor cell proliferation. See page 1, lines 5-13.

Where the extract as having anti-inflammatory activity extracted from crude-mussel powder has an effect on production of human platelets. See page 5, lines 19-27.

Where the preparation is used in diseases as cancers, see page 7, line 28.

WO 00/53198 does not teach polyoxyethylene sorbitan.

As it is currently known in the prior art, the polyoxyethylene sorbitan is commonly known as Tween-20, which is a common surfactant that is used as detergent and emulsifier.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to design a method for treating a malignant tumor cancers as taught by WO 00/53198 and get an extract from mussels using common surfactant such as polyoxyethylene sorbitan commonly known as Tween-20. One would be motivated to use Tween-20 for lipid extraction to achieve extract from mussels since Tween-20 is commonly and successfully used in such methods.

Claims 1-3, 12, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bui et al., U.S. 6,596,303 in view of the current state of the prior art.

Bui et al. teach a pet food product and process for producing the pet food product for use for alleviation of arthritic symptoms, where the food comprises an effective amount of an active extract of *Perna canaliculus*. See Abstract.

In column 2, lines 13-16, it states that certain marine organisms contain compounds that when fed to animals aid in treatment of inflammation, where one of these organisms is *Perna canaliculus* in which its anti-inflammatory activity was first identified in a clinical study on leukemia.

Bui et al. do not teach polyoxyethylene sorbitan.

As it is currently known in the prior art, the polyoxyethylene sorbitan is commonly known as Tween-20, which is a common surfactant that is used as detergent and emulsifier.

Therefore, it would have been obvious to one in the art at the time the invention was made to design a method for alleviating arthritic symptoms as taught by Bui et al. and get an extract from mussels using common surfactant such as polyoxyethylene sorbitan, commonly known as Tween-20. One would be motivated to use Tween-20 for lipid extraction to achieve extract from mussels since Tween-20 is commonly and successfully used in such methods.

### ***Objected Claims***

Claims 7-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

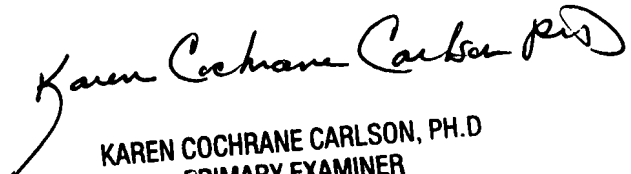
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

Art Unit: 1656

supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KAREN COCHRANE CARLSON, PH.D.  
PRIMARY EXAMINER